



KENYA EXPERIENCE IN IMPLEMENTATION OF WTO TBT AGREEMENT AND GOOD REGULATORY PRACTICES

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BACK GROUND

- Good regulatory practices refer to procedures involved in the consideration and adoption of laws, regulations, and standards. International best practices call for tight public-private consultations before a law, regulation, or standard is adopted. Advance notice, consultation, publication of a draft for meaningful public comment and government response, adoption, and appropriate transition periods for adjustment are essential aspects of GRP.
- GRP also entails calculating whether benefits outweigh costs, particularly as they may pose burdensome costs on the private sector and discourage competition in the marketplace.

Statutory Instrument Act No. 23 of 2013

An Act of Parliament to provide for the making, scrutiny, publication and operation of statutory instruments and for matters connected therewith

The Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by—

- (a) requiring regulation-making authorities to undertake appropriate consultation before making statutory instruments;
- (b) requiring high standards in the drafting of statutory instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;

- c) improving public access to statutory instruments;
- (d) establishing improved mechanisms for parliamentary scrutiny of statutory instruments; and
- (e) establishing mechanisms to ensure that statutory instruments are periodically reviewed and, if they no longer have a continuing purpose, then its repealed

❖ INTERNAL CONSULTATIONS AND REVIEW

- Before a Regulation Making Authority develops and adopts Regulations, the law require that they consult with persons who are likely to be affected by the proposed regulation and in particular where the proposed regulation is likely to:
 - have a direct, or a substantial indirect effect on business; or restrict competition
 - In determining whether any consultation that was undertaken is appropriate, the regulation making

GRP Law cont.

authority is required to consider any relevant matter, including the extent to which the consultation:

- relied on the knowledge of persons having expertise in fields relevant to the proposed Regulation; and
- ensured that persons likely to be affected by the proposed regulation had an adequate opportunity to comment on its proposed content.

The law requires that this is done through

- notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed regulation; or
- By inviting submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed regulation.

GRP Law cont

- **Regulatory Impact assessment**
- This is only done if the proposed Regulation is likely to impose **significant costs** on the community or a part of the community, the Regulation Making Authority is required conduct RIA and prepare a regulatory impact statement about the regulation.
- The should contain the objectives of the proposed Regulations and the reasons for them;
- Also explain the effect of the proposed Regulations,
- seek the best, reasonably obtainable information, including scientific, technical, economic, or other information relevant to the regulation it is developing;

- an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- the reasons why the selected rule is preferable.
- indicate the period for which comments shall be received. (Not more 60 day from the date of the notice)
- The Statement is then advertised on an appropriate public, accessible online platform or print.

IMPLEMENTATION OF THE WTO TBT AGREEMENT



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Standards

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- National TBT Committee
- WTO TBT Enquiry Point
- WTO TBT Notification Authority

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Outline of Presentation

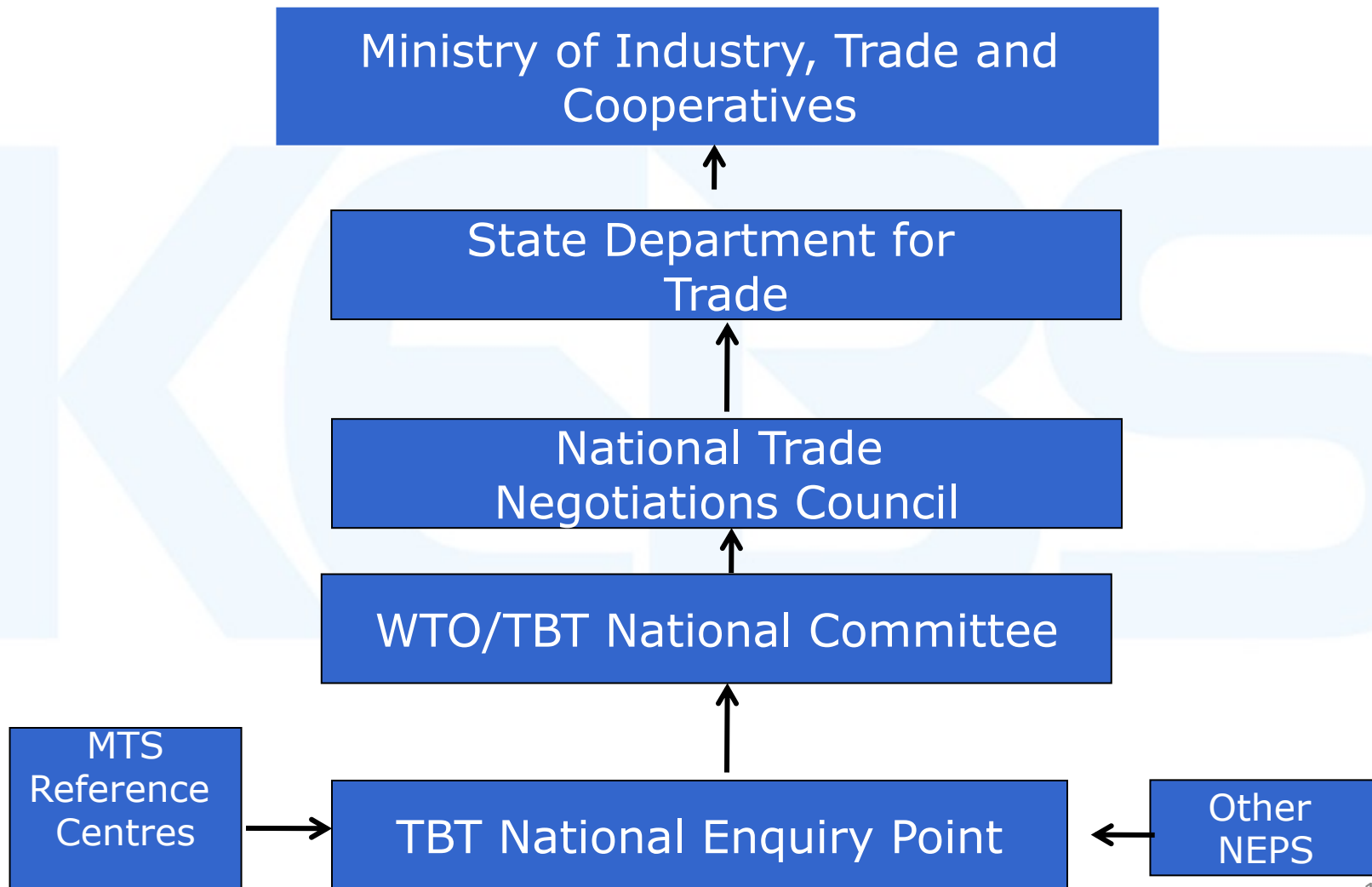


- ❖ Means
- ❖ Institutional Framework
- ❖ Membership
- ❖ Terms of Reference
- ❖ Administration
- ❖ Challenges

- ❖ Consultations in Kenya are carried out through the TBT National Consultative Committee
- ❖ The TBT National Notification Authority(NNA) is based at the State Department for Trade
- ❖ The TBT National Enquiry Point(NEP) is based at the Kenya Bureau of Standards

Implementation of TBT Agreement

Institutional Framework





Membership

National Government

- ❖ State Department for Trade – Chair
- ❖ Ministry of Health
- ❖ State Department of East African Affairs
- ❖ State Department of Agriculture
- ❖ Directorate of Veterinary Services
- ❖ The Office of the Attorney General

Membership



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Regulatory Authorities & Statutory Bodies

- ❖ Kenya Plant Health Inspectorate Service (KEPHIS)
- ❖ Kenya Industrial Property Institute (KIPI)
- ❖ National Environment Management Authority (NEMA)
- ❖ Export Promotion Council
- ❖ Kenya Investment Authority
- ❖ NACADA
- ❖ KENTRADE
- ❖ Kenya Accreditation Service (KENAS)



Membership

Consumer Bodies

- ❖ Consumer Information Network

Business Associations

- ❖ Kenya Association of Manufacturers (KAM)

Universities

- ❖ University of Nairobi

Kenya Bureau of Standards (KEBS) - Secretariat

Terms of Reference

- ❖ To review all issues pertaining to TBT
- ❖ To review the operation and administration of the TBT Agreement with regard to enquiry and notification point obligations
- ❖ To review developments in technical regulations, standards, & conformity assessment procedures that are barriers to trade nationally & in trading partners
- ❖ To exchange information and assist in the co-ordination among ministries and lead agencies on responses to WTO foreign notifications
- ❖ Technical evaluation of all WTO TBT foreign notifications

- ❖ To review developments in the WTO TBT Committee
- ❖ To review responses and enquiries to the country's notifications to WTO
- ❖ To provide views and other inputs for the Triennial Reviews of the TBT Committee
- ❖ To review developments in Trade and regulatory practices
- ❖ Development of National Positions with regard to WTO TBT issues for onward transmission to the Geneva - based Kenyan negotiators
- ❖ To review Technical Assistance needs through the Ministry responsible for trade matters



Administration

- ❖ Committee meets at least three times a year, a month before the Scheduled WTO TBT Committee meeting in Geneva

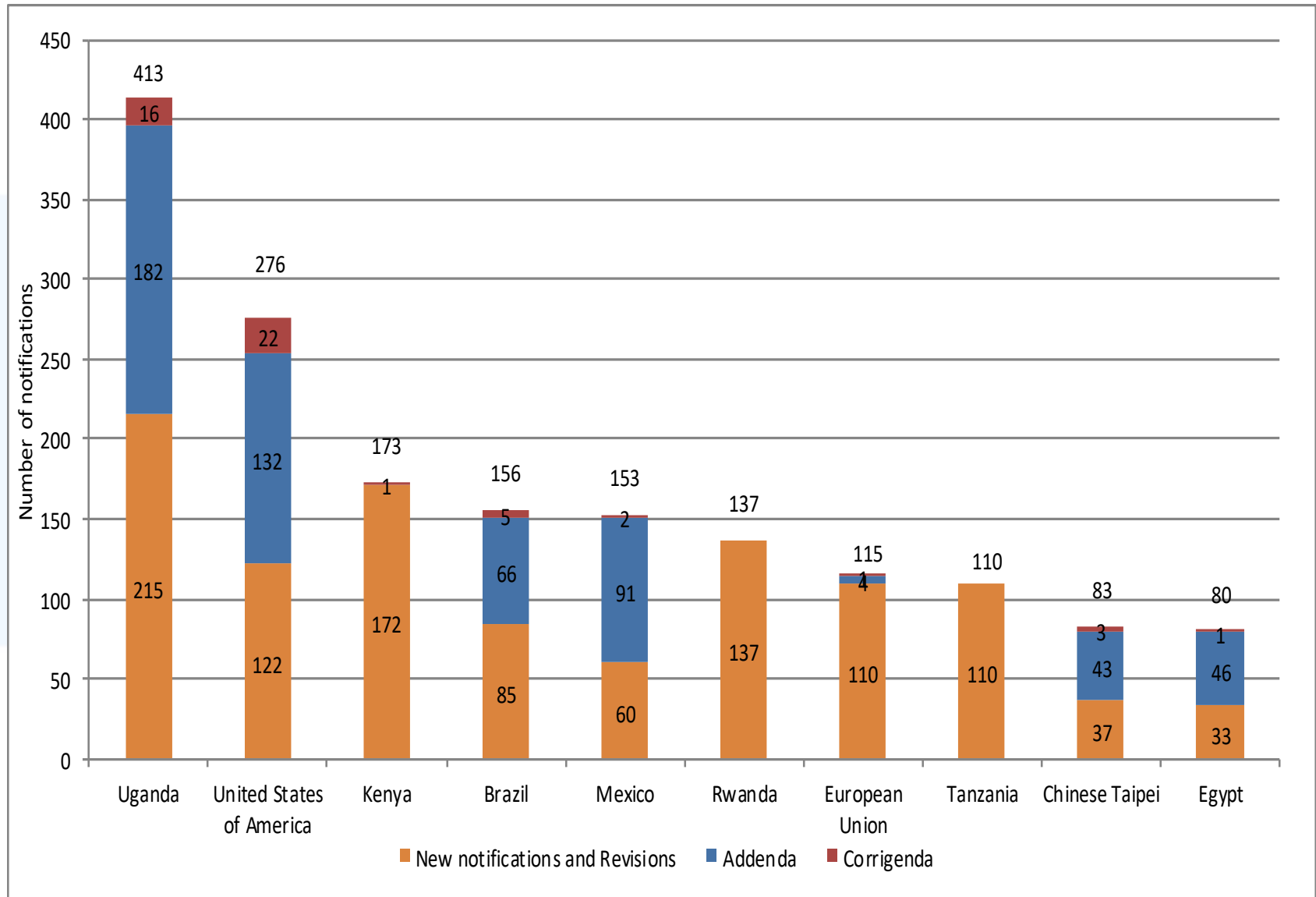
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Typical Agenda

- Minutes of the last meeting and matters arising
- Discussions on TBT Regional Forum
- Discussions on EAC Regional TBT Workplan
- Preparations for the WTO TBT meeting in Geneva
 - Report from previous WTO TBT meeting in Geneva
 - Triennial Review
 - Invitation Letter
 - Position paper
- Technical Evaluation of Domestic and Foreign Notifications

TOP TEN WTO MEMBERS WHO PRODUCED MOST NOTIFICATIONS IN 2018



TBT MEETING GENEVA, MARCH 2019



Kenya Bureau of Standards

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Challenges



- ❖ There is limited feedback from the business community on foreign notifications
- ❖ Delayed communication from regulatory authorities concerning proposed/revised technical regulations
- ❖ Inadequate resources both human and capital
- ❖ Delay in getting full texts/lack of response from some NEPS
- ❖ Full texts in national language and no available translations



**THANK
YOU**

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THANK YOU!!



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